

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Case No. 12-12020 (MG)
)	
RESIDENTIAL CAPITAL, LLC, <u>et al.</u> ,)	Chapter 11
)	
Debtors.)	Jointly Administered
)	
JULIO SOLANO,)	Adv. Case No. 13-01255 (MG)
)	
Plaintiff,)	
)	
v.)	
)	
GMAC MORTGAGE, LLC et. al.,)	
)	
Defendant.)	
)	

**STIPULATION AND ORDER RESOLVING (I) MOTIONS BY JULIO SOLANO (A)
FOR RELIEF FROM THE AUTOMATIC STAY AND (B) TO FILE A LATE PROOF OF
CLAIM AND (II) ADVERSARY PROCEEDING FILED BY JULIO SOLANO**

This stipulation and order (the “**Stipulation**”) is entered into on July 8, 2013, by and among Residential Capital, LLC (“**ResCap**”), GMAC Mortgage, LLC (“**GMAC Mortgage**”) and Executive Trustee Services, LLC (“**ETS**”), debtors and debtors-in-possession in the above-captioned jointly administered chapter 11 cases, and Julio Solano (“**Movant**” and collectively with ResCap, GMAC Mortgage and ETS, the “**Parties**”).

RECITALS

A. On May 14, 2012 (the “**Petition Date**”), ResCap, GMAC Mortgage, ETS and certain of their affiliates (collectively, the “**Debtors**”) filed petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”).

B. Prior to the Petition Date, on February 15, 2011, ETS sold at trustee's sale (the "Trustee's Sale") a property (the "Property") owned by the Movant and located at 695 Monte Bello Drive, Santa Rosa, California 95403. The property was sold to The Bank of New York Mellon Trust Company, N.A., as trustee pursuant to a trustee's deed upon sale (the "Trustee's Deed Upon Sale") recorded on March 11, 2011.

C. On June 7, 2011, Movant filed an action in the Superior Court of the State of California, County of Sonoma (the "State Court"), captioned *Solano v. GMAC Mortgage LLC, et. al.*, Case No. SCV249801 (the "State Court Action"), in connection with the foreclosure and Trustee's Sale of the Property. On April 2, 2012, Movant filed a Second Amended Complaint (the "Second Amended Complaint") in the State Court Action. The Second Amended Complaint seeks (i) Cause of Action 1 – to set aside the Trustee's Sale of the Property or to obtain an award of monetary damages for an allegedly illegal, willful and oppressive sale of real property, (ii) Cause of Action 2 –to cancel of the Trustee's Deed Upon Sale,¹ (iii) Cause of Action 3 – damages for allegedly unfair or deceptive business practices under California law, (iv) Cause of Action 4 – damages in connection with a finding that GMAC Mortgage is estopped from not accepting Movant's alleged tender of funds, (v) Cause of Action 5 – a determination that the defendants' actions in connection with the Trustee's sale constituted negligence and associated damages,² and (vi) Cause of Action 6 – damages for negligent infliction of emotional distress to the Movant.

D. On January 10, 2013, Movant filed the *Motion of Creditor Julio Solano for Order Pursuant to Section 362(d) of the Bankruptcy Code, Bankruptcy Rule 4001 and Local*

¹ Cause of Action 2 was asserted against The Bank of New York Mellon Trust Co., as trustee only.

² Causes of Action 4 and 5 were asserted against GMAC Mortgage only.

Bankruptcy Rule 4001-1 Modifying the Automatic Stay to Allow Continuation of Pre-Petition Litigation [Docket No. 2604] (the “**Stay Relief Motion**”) seeking relief from the automatic stay in order to proceed with his claims in the State Court Action.

E. On February 15, 2013, Movant filed the *Motion for Permission to Extend Deadline for Julio Solano to File Proof of Claim* [Docket No. 2935] (the “**Late Claim Motion**”), seeking leave to file a proof of claim after the claims bar date. The Late Claim Motion was supported by the *Declaration of Richard Sax in Support of Motion for Permission to Extend Deadline for Julio Solano to File Proof of Claim* [Docket No. 2936].

F. Also on February 15, 2013, Movant filed his *Complaint to Determine Dischargeability of Debt* (the “**Adversary Complaint**”), initiating Adversary Proceeding No. 13-01255 and naming as defendants, ResCap³ and GMAC Mortgage. The Adversary Complaint seeks a determination that any debt owed by ResCap or GMAC Mortgage to Movant is non-dischargeable pursuant to Bankruptcy Code sections 523(a)(2)(A), (a)(4), and (a)(8).

G. On March 14, 2013, the Debtors filed their *Objection to Motion for Permission to Extend Deadline for Julio Solano to File Proof of Claim* [Docket No. 3185] and their *Objection to Motion of Creditor Julio Solano for Order Pursuant to Section 362(d) of the Bankruptcy Code, Bankruptcy Rule 4001 and Local Bankruptcy Rule 4001-1 Modifying the Automatic Stay to Allow Continuation of Pre-Petition Litigation* [Docket No. 3188].

H. The hearings on each of the Stay Relief Motion and the Late Claim motion were adjourned from time-to-time by consent of the Parties. Similarly, the Debtors deadline to answer or otherwise respond to the Adversary Complaint was extended from time-to-time by consent of the parties or by order of the Bankruptcy Court.

³ The Adversary Complaint actually lists “ResCap Residential Capital, LLC” as a defendant.

I. The Parties have agreed to a resolution of the Stay Relief Motion, the Late Claim Motion and the Adversary Complaint.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into this Stipulation, and the covenants and conditions contained therein, **IT IS STIPULATED AND AGREED** by and between the Parties hereto, as follows:

1. Upon entry of this Stipulation by the Bankruptcy Court, (i) the Late Claim Motion shall be deemed withdrawn with prejudice and (ii) the Adversary Complaint shall be deemed withdrawn with prejudice, in each case without further order of the Bankruptcy Court.

2. To the extent applicable, the automatic stay imposed by Bankruptcy Code section 362(a) shall be modified solely for the purpose of permitting Movant to pursue his requests in the State Court Action (i) to set aside the Trustee's Sale and (ii) for cancellation of the Trustee's Deed Upon Sale, but for no other purpose.

3. The State Court Action shall be the sole proceeding in which to resolve any and all non-monetary claims the Movant may have arising out of or in connection with the foreclosure of the Property, the Trustee's Sale and the Trustee's Deed Upon Sale.

4. In all other respects, the Stay Relief Motion is denied and Movant shall not be permitted to assert in the State Court Action or in a proof of claim in the Debtors' chapter 11 cases any of the Causes of Action to the extent such Cause of Action seeks monetary damages against GMAC Mortgage or ETS.

5. This Court shall retain jurisdiction to hear all matters or disputes arising from or related to this Stipulation.

6. This Stipulation may not be altered, modified or changed unless in writing signed by the Parties.

7. This Stipulation may be executed in multiple counterparts, each of which will be deemed an original, and all of which when taken together shall constitute one and the same document.

8. This Stipulation will be effective immediately upon approval by the Court.

9. Each person who executes this Stipulation on behalf of a Party hereto represents that he or she is duly authorized to execute this Stipulation on behalf of such Party.

MORRISON & FOERSTER LLP	LAW OFFICES OF RICHARD SAX
<p><u>/s/ Norman S. Rosenbaum</u> Gary S. Lee Norman S. Rosenbaum James A. Newton 1290 Avenue of the Americas New York, New York 10104 Telephone: (212) 468-8000 Facsimile: (212) 468-7900</p> <p><i>Counsel for the Debtors and Debtors in Possession</i></p>	<p><u>/s/ Richard Sax</u> Richard Sax 448 Sebastopol Avenue Santa Rosa, CA 95401 Telephone: (707) 525-1824 Facsimile: (707) 525-8119</p> <p><i>Counsel for Julio Solano</i></p>

SO ORDERED.

Dated: July 15, 2013
New York, New York

/s/Martin Glenn
MARTIN GLENN
United States Bankruptcy Judge